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August 3, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal  
Date of Filing: April 27, 2004  
Case No.: TIA-0089

XXXXXXXXXXXXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Worker Advocacy Office for DOE assistance in filing for state workers' compensation benefits based on his employment at the Knolls Atomic Power Laboratory. The DOE Office of Worker Advocacy (OWA) determined that the Applicant was not a DOE contractor employee under the applicable statute and, therefore, was not eligible for DOE assistance. The Applicant appeals that determination. As explained below, we have concluded that the determination is correct.

*I. Background*

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. The Act creates two programs for workers, one of which is administered by the DOE. 1/

The DOE program provides for an independent physician panel assessment of whether a "Department of Energy contractor employee" has an illness related to exposure to a toxic substance at a DOE facility. 42 U.S.C. § 7385o. In general, if a physician panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it

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1/ The Department of Labor administers the other program. See 10 C.F.R. Part 30; [www.dol.gov/esa](http://www.dol.gov/esa).

contests the claim. 42 U.S.C. § 7385o(e)(3). As the foregoing indicates, the DOE program itself does not provide for benefits.

The DOE program is specifically limited to DOE contractor employees who worked at DOE facilities. The reason is that the DOE would not be involved in state workers' compensation proceedings involving other employers.

The regulations for the DOE program are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The DOE Worker Advocacy Office is responsible for this program and has a web site that provides extensive information concerning the program, including information in response to "Frequently Asked Questions." 2/

Pursuant to an Executive Order, 3/ the DOE has published a list of facilities covered by the EEOICPA programs, and the DOE has designated next to each facility whether it falls within the EEOICPA's definition of "atomic weapons employer facility," "beryllium vendor," or "Department of Energy facility." 68 Fed. Reg. 43,095 (July 21, 2003) (current list of facilities). The DOE's published list also refers readers to the OWA web site for additional information about the facilities. 68 Fed. Reg. 43,095.

The Applicant requested physician panel review, stating that he was employed at the Knolls Atomic Power Laboratory during the period 1978 to 1998. The OWA determined that the Applicant was not a DOE contractor employee under the EEOICPA. See April 7, 2004 Letter from OWA to the applicant. In the appeal, the Applicant disagrees with that determination.

## *II. Analysis*

As explained above, the DOE physician panel process is limited to DOE contractor employees. In order to be a DOE contractor employee, a worker must be employed by a firm that manages or provides other specified services at a DOE facility, and the worker must actually be employed at the DOE facility. The EEOICPA excludes, from the definition of a DOE facility, facilities operated by the Naval

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2/ See [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

3/ See Executive Order No. 13,179 (December 7, 2000).

Nuclear Propulsion Program. The EEOICPA defines a DOE facility in relevant part as follows:

any building, structure, or premise, including the grounds upon which such building, structure, or premise is located . . . in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program). . . .

42 U.S.C. § 73841(12). Executive Order 12344 cites Knolls Atomic Power Laboratory as a Naval Nuclear Propulsion Program facility. Exec. Order No. 12344, 47 Fed. Reg. 4979 (1982). Consistent with this, the DOE facility list does not include the Knolls laboratory. See 68 Fed. Reg. 43095. The list does include the "Separations Process Research Unit," operated by the DOE at the Knolls laboratory from 1950 to 1965, see 68 Fed. Reg. 43099, but the Applicant did not begin work at the laboratory until 1978, well after the end of those operations. Accordingly, the OWA's determination that the Applicant was not a DOE contractor employee under the EEOICPA is consistent with the EEOICPA, Executive Order 12344, and the DOE facility list.

Based on the foregoing, we have determined that the OWA correctly concluded that the Applicant is not eligible for DOE assistance in filing for stated workers' compensation benefits. Accordingly, we have determined that the appeal should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0089 be, and hereby is, denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 3, 2004

